In the

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. _____

G. RAYMOND ARNETT,
as Director of the
Department of Fish
and Game of the
State of California,

Plaintiff and Respondent

v.

5 GILL NETS, etc.

Defendant

RAYMOND MATTZ,

Intervenor and Petitioner

Petition for a Writ of Certiorari to the California Court of Appeal, First District

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PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST DISTRICT

Petitioner, Raymond Mattz, respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the California Court of Appeal, First District, entered in this case on October 21, 1971.

OPINIONS BELOW

The opinion of the Court of Appeal is reported at 20 Cal. App.3d 729, 97 Cal Rptr. 894 and attached as Appendix A. The Opinion and Decision, Findings of Fact and Conclusions of Law, and Judgment and Order of the California Superior Court for Del Norte County are unreported. They are attached as Appendix B.

JURISDICTION

The judgment of the Court of Appeal was entered on October 21, 1971. The California Supreme Court, one judge dissenting, denied a petition for hearing on December 16, 1971. A copy of the order denying a hearing is attached as Appendix C. This petition for a writ of certiorari is due on or before March 15, 1972. (American Railway Express Co. v. Levee, 263 U.S. 19 (1923).) Execution of judgment has been stayed pending final resolution of the case. This court has jurisdiction pursuant to 28 U.S.C. §1257(3).

QUESTION PRESENTED

Did a federal law permitting non-Indians to homestead "surplus" land on part of a California Indian reservation abolish that part of the reservation?

STATUTES INVOLVED

18 U.S.C. §§1151 and 1162 and the Act of June 17, 1892, 27 Stat 52, are set out in Appendix D.

STATEMENT OF THE CASE

A California game warden seized five fish nets belonging to Raymond Mattz on September 4, 1969. The nets were seized from a stowage on non-Indian owned property approximately 200 feet from the Klamath River and within 20 miles of the Pacific Ocean.

On March 3, 1970, California petitioned the Del Norte County Superior Court to adjudge the nets a public nuisance and order their forfeiture. Raymond Mattz intervened to oppose the state's petition. He alleged that the land where the nets were seized is part of an Indian reservation, that he is an American Indian enrolled on the tribal roll of that reservation, and that the seizure of the nets therefore violated 18 U.S.C. §1162.

The superior court granted the petition for forfeiture, subject to Mr. Mattz' appeal. The court ruled that the nets were not seized in "Indian Country" within the meaning of 18 U.S.C. §1162. The court made no finding or conclusion as to whether Raymond Mattz is an Indian or as to whether the seizure would have been lawful if the land were part of a reservation.[1]

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1. This petition presents no question of whether California fishing laws apply on Indian reservations. The superior court did not rule on that question, because it decided the nets were seized outside any reservation.
footnote 1 continued on p. 3

Raymond Mattz appealed, and on October 21, 1971, the California Court of Appeal filed its opinion affirming the superior court's judgment. On December 16, 1971, the California Supreme Court denied Raymond Mattz' petition for a hearing.

REASON FOR GRANTING THE WRIT

THIS COURT'S DECISION IN SEYMOUR V. SUPERINTENDENT IS INCONSISTENT WITH CALIFORNIA'S RULING THAT INDIAN RESERVATIONS ARE ABOLISHED BY FEDERAL LAWS PERMITTING NON-INDIAN HOMESTEADING OF "SURPLUS" RESERVATION LAND.

President Pierce established the Klamath River Reservation by Executive Order in 1855. (I Kappler, Indian Affairs--Laws and Treaties 816-817.) That reservation was a strip of land one mile wide on each side of the Klamath River from the Pacific Ocean up river until it included 25,000 acres. This distance turned out to be approximately 20 miles.

In 1864 a law was enacted which directed the President to establish four reservations for California Indians. (13 Stat.39.) Section 2 of that law authorized the President to

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footnote 1 continued

The Court of Appeal indicated in dicta that state fishing laws apply on an Indian reservation unless a federal treaty, agreement or statute establishes special Indian fishing rights. That is an incorrect statement of the law. State laws also do not apply where fishing rights are afforded under federal regulations. (Metlakatla Indian Community v. Egan, 369 U.S. 45, 56-57 (1962); Donahue v. California Justice Court, 15 Cal.App. 3d 557 (1971); Elser v. Gill Net Number One 246 Cal.App. 2d 30 (1966).)

include existing reservations in the four reservations. Section 3 provided for the disposition of the "several Indian reservations in California which shall not be retained for the purposes of Indian reservations, under the provisions of the preceding section of this act." That is, the 1864 law expressly provided that existing reservations would cease to have the status of Indian reservations if not included in the four new reservations. (See United States v. Forty Eight Pounds of Rising Star Tea, 35 Fed. 403 (N.D. Cal. 1888).)

Between 1864 and 1876 the President created four reservations.[2] One of these was the Hoopa Valley Indian Reservation, which was roughly a twelve mile square around the Trinity River just above its juncture with the Klamath. Neither the Hoopa Valley Reservation nor any of the other three included the 20 miles along the Klamath River closest to the Pacific. The Klamath River Reservation therefore ceased to exist.

In 1891 President Benjamin Harrison issued an executive order extending the boundaries of the Hoopa Valley Reservation to include a strip one mile on each side of the Klamath from the then boundary of the reservation to the Pacific Ocean. (I Kappler, Indian

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2. The dates when these four reservations came into existence is somewhat muddled because the President himself did not purport to create a reservation until long after the reservation had been recognized by other government officials. (See I Kappler, Indian Affairs--Laws and Treaties 815; Donnelly v. United States, 228 U.S. 243 (1913); United States v. Forty Eight Pounds of Rising Star Tea, supra.)

Affairs--Laws and Treaties 815.) That strip, about 40 miles long, is sometimes referred to as the Hoopa Extension and included what was the Klamath River Reservation.

Then came the law which is the crux of this litigation. The Act of June 17, 1892, 27 Stat. 52-53, provided that Indians living on "the lands embraced in what was the Klamath River Reservation" were to have one year to select allotments--pieces of land held in trust for individual Indians--from the reservation. After that the Secretary of the Interior was to reserve land being used for Indian villages. Any remaining land was to be disposed of under the homestead acts and the laws authorizing sale of mineral, stone, and timber lands. This "remaining" land was not to be restored to the public domain, however. The proceeds of the land sales, rather than accruing to the Government, were to be held in trust for the maintainance and education[3] of Indians residing on the lower 20 miles of the Extension.

The Court of Appeal ruled that the 1892 act disestablished the reservation status of the lower 20 miles of the Extension. It summarized its view in the following language:

> "[T]he opening of the old Klamath reservation to unrestricted homestead entry in 1892 is strongly inconsistent with the continued existence of the reservation; an Indian reservation is by definition an area reserved from homestead entry or other allotment to individual ownership..."

That statement by the Court of Appeal is irreconcilable with 18 U.S.C. §1151 which

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3 The uses of the trust fund were changed in an insignificant way by 39 Stat. 976 (1917).

defines Indian country for purposes of 18 U.S.C. §1162 as including "all land within the limits of any Indian reservation...not withstanding the issuance of any patent." The Court of Appeal's decision is also completely inconsistent with Seymour v. Superintendent, 368 U.S. 351 (1962). Seymour held that while the North Half of the Colville Reservation ceased to be Indian country when an 1892 statute restored that half to the public domain, the South Half did not cease to be part of the Colville reservation under a 1906 act providing for sale to the public of "surplus" lands in that part with payment of the proceeds to the Indians' benefit.

As the Court of Appeal noted, the 1892 Colville act was passed only two weeks after the 1892 Hoopa Extension Act. A difference in intent seems reasonable from the fact that one act (Colville) provides for restoration to the public domain while the other (Hoopa Extension) provides only for a sale with proceeds to be used for the Indians benefit. Yet the California court drew the opposite conclusion.[4]

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4. Else v. Gill Net Number One, supra, states "Thus [after the 1892 Act], the lower 20 miles of the 40 mile long strip of land included in the 1891 extension of the Hoopa Valley Reservation, for all practical purposes almost immediately lost its identity as part of the Hoopa Valley Reservation." What the court meant by "for all practical purposes" is not clear. That lack of clarity is not surprising, however, for the case involved events on the upper 20 miles of the Extension. Even if the statement were not dicta, however, it would show no more than that Indians have been ignorant of and too poor to enforce their legal rights. And finally, the status of land under 18 U.S.C. §1162 cannot be concluded even by a fity year old state court decision. (Seymour, supra, 268 U.S. at 353.)

The 1892 Hoopa Extension Act does refer to "lands embraced in what was [the] Klamath River Reservation." However, as explained above, the Klamath River Reservation had gone out of existence by 1891, so that the phrase"what was [the] Klamath River Reservation" was simply a way of describing the lower twenty miles of the Hoopa Extension. The use of that phrase is not inconsistent with reservation status for the lower twenty miles of the extension. (Cf. New Town v. United States Case No. 71-1147, 8th Cir, slip opinion, at 9, 10 (Jan. 17, 1972).)

At least one later act of Congress also shows that the lower twenty miles of Extension reamained part of the reservation.[5] Public Law 85-420, 72 Stat. 121 (85th Con., 2d Sess, 1958), provides in relevant part:

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5. Another law which is certainly not inconsistent with the reservation status of the lower twenty miles of the Extension is 25 U.S.C. §348a. It provides in relevant part:

> "The period of trust on lands alloted to Indians of the Klamath River Reservation, California, which expired July 31, 1919, and the legal title to which is still in the United States, is hereby reimposed...."

Despite the misplaced modifier, that provision does not mean the reservation expired on July 31, 1919. Rather, the provision means that the trust status of the allotments expired in 1919. As trust periods for allotments were initially for 25 years (25 U.S.C. §348), the allotments referred to were created in 1894 -- two years after the lower twenty miles of the Extension (referred to as the Klamath River Reservation) supposedly ceased to have reservation status.

"All lands now or hereafter classified as vacant and undisposed-of ceded lands (including townsite lots) on the following named Indian reservations are hereby restored to tribal ownership, subject to valid existing rights:

Reservation and State	Approximate Acreage
Klamath River, California	159.57

(Emphasis added.)

The only way lands could be restored to tribal ownership "on" the Klamath River Reservation is if the lower twenty miles of the Hoopa Extension were part of a reservation in 1958. (See Seymour, supra, 368 U.S. 351 at 356-357.) The denomination of that area as Hoopa, Hoopa Extension, or Klamath River Reservation has no bearing on the area's status as part of some reservation and Indian country within the meaning of 18 U.S.C. §§1151 and 1162.

The non-Indian ownership of the land where the nets were seized does not matter either. Non-Indian owned lands within a reservation are nevertheless part of that reservation. (18 U.S.C. §1151; Seymour, supra, 352 U.S. at 357-358; Hildebrand v. Taylor, 327 F. 2d 205 (10th Cir. 1964); New Town v. United States, supra, slip opinion (5th Cir. 1972).)

CONCLUSION

The repeated disregard for Indian rights is a history of "melancholy...tragedies." (See Conners v. United States, 180 U.S. 273 (1901).) Most Indian land has been taken, and the Indians' traditional ways of life have been almost completely wiped out.

Raymond Mattz is a member of the Yurok tribe, a tribe which for centuries has fished with nets along the lower Klamath River. (Kroeber, Handbook of the Indians of California 9, 84-86.) The Yuroks, like other Indians in California and elsewhere in the United States, live in conditions of poverty. Fishing with nets along the Klamath River affords them a way to supplement their diet and retain at least one aspect of their traditional life.

The Hoopa Extension is all that is left of the Yorok's land along the Klamath. It and the other reservation land in California constitute only a minute part of the state. (See United States Department of the Inteiror, National Atlas, Sheet 272 (1970).) California's effort do further reduce the area where Indians may control their own fishing is totally unconscionable.

California's reading of the Act of June 17, 1892, is also inconsistent with Seymour v. Superintendent, supra, New Town v. United States, supra, and this court's rule that laws affecting Indians are to be construed in the way most favorable to them. (Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Choate v. Trapp, 224 U.S. 665, 675 (1912); United States v. Celestine, 215 U.S. 278, 290 (1909)).

This court should grant a hearing in this case, reverse the judgement below, and remand for further proceedings consistent with the reservation status of the land where Raymond Mattz's nets were seized.

Dated: March 10, 1972

Respectfully submitted

LEE J. SCLAR
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By: _____
Lee J. Sclar

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Plaintiff and Respondent, vs. 5 GILL NETS, etc. Defendant. RAYMOND MATTZ, Intervnor and Appellant.	1 Civil 29109 (Sup. Ct. No. 10434) Filed: Oct. 21, 1971

Raymond Mattz appeals from a judgment ordering forfeiture under Fish and Game Code section 8630 of 5 nylon gill nets belonging to him. The nets had been seized by a state game warden at a point on the Smith River within one mile of its confluence with the Klamath River. The seizure occurred on land owned by a lumber company, less than 20 miles from the mouth of the Klamath.

Appellant intervened and resisted the petition for forfeiture, asserting that he was an enrolled Indian fishing on Indian country and that the statutory prohibition against the use of gill nets was therefore inapplicable.

In 1953, Congress consented to the

application of California criminal laws to Indians and "Indian country" (18 U.S.C. § 1162); but the enactment preserved Indian rights to fish or hunt "afforded under Federal treaty, agreement, or statute." Thus, appellant's position depends upon a showing (1) that the nets were found on "Indian country" within the meaning of the statute, and (2) that there was " a Federal treaty, agreement, or statute" establishing appellant's right to fish.

Fish and Game Code section 12300, enacted in response to the federal statute, provides that portions of the Fish and Game Code, including those sought to be applied here, do not apply to Indians whose names are inscribed on the tribal roll "while on the reservation of such tribe" in cases where the code would not previsously have applied. (See Elser v. Gill Net Number One (1966) 246 Cal.App.2d 30, 36-37.) Thus appellant's entitlement to protection under the California statute also depends on fact determinations: (1) whether appellant was "on the reservation," and (2) whether he was enrolled as a member of the tribe.

The trial court made a single dispositive determination that the land where the nets were seized was not Indian land within the meaning of either 18 U.S.C., section 1162 or Fish and Game Code section 12300. The only issue in the appeal is whether that determination was correct.

The following history of the land where the nets were seized is abstracted from Elser v. Gill Net Number One, supra, 246 Cal.App.2d 30, 33-34, and Donnelly v. United States (1912) 228 U.S. 243, 253-254. The disputed area is a strip running 20 miles upstream from the mouth of the Klamath River, and extending one mile on

either side of the river. The area, inhabited by the Klamath Indians, was early designated the "Klamath River Reservation." The reservation was terminated in 1864 by an act of Congress which authorized the establishment of four reservations in California, and directed that land in the existing reservations not incorporated in the four designated reservations be sold. (13 Stat. 39.) Pursuant to the statute, the Hoopa Valley Reservation was created nearby. No part of the earlier Klamath River Reservation was incorporated in it; the former Klamath River Reservation was later adjudged to have been vacated. (United States v. Forty-Eight Pounds of Rising Star Tea, etc. (Dist.Ct., N.D.Cal. 1888) 35 F. 403, 406.)

Thereafter, in 1891, the Hoopa Valley Reservation was enlarged by executive order to include a strip of land one mile wide on each side of the river running from its former boundary to the mouth of the Klamath River. This order was held to be effective. (Donnelly v. United States, supra, 228 U.S. 243, 258-259.) Then, in 1892, pursuant to the 1887 General Allotment Act,[1] the strip which had previsouly been the old Klamath River Reservation was opened for public purchase. (27 Stat. 52.) This 1892 enactment is the basis of the conflict here. If it resulted in loss of reservation status of the old Klamath River Reservation area, the trial court was correct in finding that the nets were not seized on "Indian country." The appellate court in Elser, supra, 246 Cal. App.2d 30, 34, declared that the old Klamath River Reservation "for all practical purposes, almost immediately lost its identity as part of the Hoopa Valley Reservation." That statement, though persuasive, was dictum; it

1. 24 Stat. 388.

is therefore proper for us to reexamine the question.

Appellant claims that the land retained some charcteristics of Indian interest, enough to justify its definition as "Indian country" under the statutes discussed above. Congress in 1949 defined "Indian country" for present purposes as including "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, . . . " (18 U.S.C., § 1151.) This definition was applied in Seymour v. Superintendent (1962) 368 U.S. 351, where the United States Supreme Court was called upon to determine the status of another Indian reservation which had been opened to purchase by non-Indians. Although the reservation had been so opened, the court found evidence that Congress had continued to recognize the existence of the reservation; therefore it was held that the state criminal laws did not apply. (368 U.S. at pp. 356-357.) The question is whether the former Klamath River Reservation should be covered by the holding of Seymour.

In Seymour, the court dealt with the Colville Reservation in the State of Washington. In 1892, the Colville Reservation had been divided and the northern one-half "vacated and restored to the public domain" (27 Stat. 62-64). The southern half remained as a reservation. Then, in 1906, Congress authorized the Secretary of the Interior "to sell or dispose of unalloted lands in the diminished Colville Indian Reservation" (34 Stat. 80-82). The act provided for allotments to Indian on the reservation, and provided that proceeds from the sales were to be used for the benefit of the Colville and related Indians (34 Stat. 80-82, § 6). That act was implemented by a proclamation by

President Wilson in 1916 (39 Stat. 1778-1779). The Washington Supreme Court held that the reservation status of the southern one-half of the old Colville Reservation had been extinguished. (State ex rel Best v. Superior Court (1919) 107 Wash. 238, 241, 181 P. 688, 689.) The United States Supreme Court in Seymour held to the contrary, pointing to several indications of congressional intent: (1) the 1906 Act, unlike the 1892 Act which had expressly vacated the northern half of the reservation, contained no language erasing the reservation; indeed, the 1906 statute referred to the continuing existence of the Colville Reservation; (2) the 1892 Act provided that proceeds from sale of the lands could be appropriated for general public use, while the 1906 Act reserved the proceeds of sales there under for the use of the Colville and related Indians; (3) Congress had repeatedly since 1906 referred to the continuing existence of the diminished Colville Reservation (see 368 U.S. at p. 356, fn. 12 and 13), most recently in a 1956 Act -- restoring the unsold lands to tribal ownership -- which referred specifically to "the existing reservation" (70 Stat. 626-627).

The Klamath River Reservation was opened for public purchase in 1892, in a statute enacted a few days before that which vacated the northern half of the Colville Reservation. (27 Stat. 52.) The Klamath statute provided "That all of the lands embraced in what was Klamath River Reservation . . . are hereby declared to be subject to settlement, entry, and purchase under the laws of the United States granting homestead rights and authorizing the sale of mineral, stone, and timber lands: . . ." The Act provided for Indians then located on the land to apply for allotments within one

year and directed that the proceeds of sale were to be used for the Indians then residing on the land. The provision for disposition of proceeds was amended in 1917 so that the funds might be used for improvements to Indian allotments and for construction of roads, trails, etc. (39 Stat. 969, 976.)

The Klamath River Reservation history bears some resemblance to the Colville history reviewed in Seymour. Like the act opening the southern half of the Colville Reservation, 27 Stat. 52 does not specifically vacate the Klamath River Reservation. Also like the 1906 act, 27 Stat. 52 provides for allocation of proceeds to the Indians of the area rather than to the general revenues of the United States.

However, there are important differences between the Colville history and the Klamath River history. Unlike the 1906 act, which specifically referred to the continuing existence of the Colville Reservation, 27 Stat. 52 does not refer to the Klamath River Reservation as continuing in existence; indeed, it mentions "the lands embraced in what was [the] Klamath River Reservation." (Emphasis added.) The statute opening the Klamath River Reservation was enacted approximately two weeks before the statute vacating the north half of the ... Colville Reservation, and both acts were implementations of the General Allotment Act, 24 Stat. 388. From the differences in language a difference in intent may reasonably be inferred.

Like the subsequent history of the Colville Reservation, which contains several congressional references to its continuing existence, there are two references to the Klamath River Reservation in statutes enacted

after the 1892 act. In 25 U.S.C., § 348a (enacted in 1942 by 56 Stat. 1081) the "period of trust on lands allotted to Indians of the Klamath River Reservation, California . . ." was extended. Appellant contends that the reference to the "Klamath River Reservation" implies a congressional assumption that the reservation still existed. The context does not support this interpretation; the reference to the reservation seems to have had no greater purpose than to identify the allotments to which the trust extension was to apply. The second congressional reference to the Klamath River Reservation is more significant. In 72 Stat. 121 (Public Law 85-420) it was enacted (in 1958) as follows: "[A]ll lands now or hereafter classified as vacant and undisposed-of ceded lands (including townsite lots) on the following named Indian reservations are hereby restored to tribal ownership, subject to valid existing rights:

"Reservation and State	Approximate Acreage
Klamath River, California....	159.57
Coeur d'Alene, Idaho.....	12,877.65
Crow, Montana.....	10,260.95
Fort Peck, Montana.....	41,450.13
Spokane, Washington.....	5,451.00

"Provided, That such restoration shall not apply to any lands while they are within reclamation projects heretofore authorized.

"SEC. 2. Title to the lands restored to tribal ownership by this Act shall be held by the United States in trust for the respective tribe or tribes, and such lands are hereby added to and made a part of the existing reservations for such tribe or tribes.

"SEC. 3. The lands restored to tribal ownership by this Act may be sold or exchanged by the tribe, with the approval of the Secretary of the Interior."

Use of the expression "on the following named Indian reservations" does indeed suggest that the draftsman of the 1958 statute may have regarded the Klamath reservation as having continued existence. But this apparent understanding of Congress cannot reasonably be construed as an enactment reviving the entire old Klamath reservation which, as we have seen, had been spoken of as defunct in the 1892 statute. Arguably the 1958 statute reestablished as "Indian country" the 159.57 acres which it "restored to tribal ownership." But that area, of course, does not include the privately owned land where the nets were seized.

In summary, the opening of the old Klamath reservation to unrestricted homestead entry in 1892 is strongly inconsistent with the continued existence of the reservation; an Indian reservation is by definition an area reserved from homestead entry or other allotment to individual ownership for the purpose of allowing tribal life and land use to continue. The history reviewed above does not show, as did the Colville history, that Congress intended to preserve the old Klamath Reservation in existence while opening the land to private entry.

The judgment is affirmed.

Christian, Jr.

We Concur:

Devine, P. J.

Rattigan, J.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF DEL NORTE

G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Petitioner, vs. 5 GILL NETS, etc., Respondent.	No. 10434

OPINION AND DECISION

The court in this decision follows the authorities and the opinion as set forth in Elser vs. Gill Net Number One 246 CA2 30, wherein it was held that Yurok Indians whose names are upon the tribal roll can legally fish with nets on the Hoopa Valley Reservation and the Hoopa Extension. When opened in 1892 by Congress for public purchase the lower 20 miles of the 40 mile long strip of land bordering the Klamath River, included in the 1891 extension of the Hoopa Valley Reservation, for all practical purposes almost immediately lost its identity as part of the Hoopa Valley Reservation. The upper 20 miles of the strip was not affected by the Act of 1892, has remained an integral part of the Hoopa Valley Reservation to the present time and has become commonly known as the Hoopa Extension or Hoopa Extension Reservation.

It appears without conflict that the nets seized were within the lower 20 miles of the Klamath River and therefore not within the boundaries of the Hoopa Reservation or Hoopa Extension.

It is the court's opinion that Section 12300 of the Fish and Game Code, does not apply to the lower 20 miles of the Klamath River and therefore the nets were properly seized as being in violation of Fish and Game Code 8602, 8603, 8664 and 8686. As these nets are contraband they are subject to forfeiture pursuant to Section 8686 and 8630 of the Fish and Game Code.

Respondent makes a very forceful and fascinating argument in his contentions that the area where these nets were seized was still Indian Country and thus the nets were not subject to seizure and forfeiture, but this court concludes it does not have the jurisdiction to make such a determination.

The nets will be ordered forfeited but are not to be sold or destroyed until after the time for appeal has elapsed and if the case is appealed not until after the case has been finally resolved. The court took judicial notice of all the documents.

Petitioner to prepare the formal order.

DATED: July 6, 1970.

FRANK S. PETERSEN
Frank S. Petersen
Judge of the Superior Cou

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF DEL NORTE

G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Petitioner, vs. 5 GILL NETS, etc., Respondent.	No. 10434 FINDINGS OF FACTS AND CONCLUSIONS OF LAW (AS ADOPTED)

This cause came on regularly for hearing before the above entitled court on May 14, 1970, without jury, Ronald V. Thunen, Jr., Deputy Attorney General, appearing on behalf of petitioner, and Robert J. Donovan, California Indian Legal Services, appearing as attorney for the intervenor, Raymond Mattz. After the presentation of evidence on behalf of each party, extensive written arguments were presented. The cause was thereafter submitted to the court for decision, and after deliberation thereon,

the court issued its opinion and decision dated July 6, 1970. Following submission of propeosed findings of fact and conclusions of law by petitioner on July 17, 1970, and the filing of objections to proposed findings by intervenor on July 20, 1970, this court heard arguments on settlement of findings on August 26, 1970, and having considered said proposed findings and objections thereto, the court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Respondent nets were seized by Warden Albert Clinton of the Department of Fish and Game on September 24, 1969. Three of the nets seized had nine inch meshes and the other two had six inch meshes.

B. At the time of seizure the nets were located approximately 200 feet from the Klamath River in the vicinity of Brooks Riffle on Property of the Simpson Timber Company located in Del Norte County.

C. Respondent nets were not in use at the time of seizure, but were stowed in a tub and gunny sack. Respondent nets were the property of one Raymond Mattz.

D. In 1891 a strip of land extending one mile on each side of the Klamath River and running from the mouth of the Klamath approximately 40 miles upstream to the Hoopa Valley reservation was incorported into said reservation.

E. In 1892, the lower 20 miles of said strip of land was opened by Congress for public purchase, and for all practical purposes almost immediately lost its iden-

tity as part of the Hoopa Valley reservation. The upper 20 miles of the strip was not affected by the act of 1892, has remained an integral part of the Hoopa Valley reservation to the present time, and has become commonly known as the Hoopa Extension or Hoopa Extension or Hoopa Extension Reservation.

CONCLUSIONS OF LAW

1. The area where respondent nets were seized is not "Indian country" within the meaning of 18 U.S.C. section 1162.

2. The place where the nets were seized is not a place where Fish and Game Code section 12300 applies.

3. The nets were properly seized as being in violation of Fish and Game Code sections 8602, 8603, 8664 and 8606.

4. Respondent nets are contraband and are subject to forfeiture pursuant to sections 8686 and 8630 of the Fish and Game Code.

DATED: Sept. 4, 1970

FRANK S. PETERSEN
JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF DEL NORTE

G. RAYMOND ARNETT, as Director of the Department of Fish and Game of the State of California, Petitioner, vs. 5 GILL NETS, etc., Respondent.	No. 10434 JUDGMENT AND ORD

The petition of G. Raymond Arnett, as Director of the Department of Fish and Game of the State of California, the petitioner named in the above entitled action, praying for a judgment of this court adjudging 5 Gill Nets (white gill net 70 feet long, nine inch mesh with lead line and 19 wooden floats; green gill net 50 feet long, nine inch mesh with lead line and 26 wooden floats; green gill net 38 feet long, six inch mesh with lead line and 10 black plastic floats; white gill net 50 feet long,

nine inch mesh with lead line and 18 plastic floats; beige gill net 50 feet long, six inch mesh with lead line and ten plastic floats), the respondents herein, to be public nuisances, and for an order declaring the same to be forfeited, and directing the destruction or sale of the whole or any part thereof, coming on May 14, 1970, regularly to be heard, the said petitioner being represented by his attorney, Ronald V. Thunen, Jr., Deputy Attorney General, and the intervenor, Raymond Mattz, being represented by his attorney, Robert J. Donovan; and

This court having issued its opinion and decision on July 6, 1970, and its findings of fact and conclusions of law on September 4, 1970; and

It further appearing to this court and the court so finds, that due and proper notice of the hearing of said petition was given by the clerk of this court, in the manner prescribed by law, and in accordance with the order of this court, and that due and legal proof thereof has been made therein to the satisfaction of this court. This court having concluded that respondent nets are contraband and are subject to forfeiture pursuant to sections 8686 and 8630 of the Fish and Game Code,

Now, therefore, IT IS ORDERED, ADJUDGED AND DECREED that said respondent more particularly described as white gill net 70 feet long, nine inch mesh with lead line and 19 wooden floats; green gill net 50 feet long, nine inch mesh with lead line and 26 wooden floats; green gill net 38 feet long, six inch mesh with lead line and 10 black plastic floats; white gill net 50 feet long, nine inch mesh with lead line and 18 plastic floats; beige gill net

50 feet long, six inch mesh with lead line and ten plastic floats, public nuisances, that the same be and are hereby forfeited, and the same are directed to be destroyed or soold in accordance with law; Provided, however, that said destruction or sale shall not be accomplished until such time as this judgment may become final.

DATED: Sept. 4, 1970

FRANK S. PETERSEN
JUDGE OF THE SUPERIOR COURT

APPENDIX C

CLERK'S OFFICE SUPREME COURT
4250 State Building

San Francisco, California 94102

Dec. 16, 1971

Dear Sir: I have this day filed Order

HEARING DENIED

In re: 1 Civil No. 29109

Arnett

vs.

5 Gill Nets

Respectfully,

G.E. Bishel
Clerk

APPENDIX D

18 U.S.C. § 1151 (62 Stat. 757, as amended by 63 Stat. 94)

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian county", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1162 (67 Stat. 588, as amended by 84 Stat. 1358)

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected

Alaska.....All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended

California.....All Indian country within the State

Minnesota.....All Indian country within the State, except the Red Lake Reservation

Nebraska.....All Indian country within the State

Oregon.....All Indian country within the State, except the Warm Springs Reservation

Wisconsin.....All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty,

agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

Act of June 17,1892, 27 Stat. 52

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the lands embraced in what was Klamath River Reservation in the State of California, as set apart and reserved under authority of law by an Executive order dated November sixteenth, eighteen hundred and fifty-five, are hereby declared to be subject to settlement, entry, and purchase under the laws of the United States granting homestead rights and authorizing the sale of mineral, stone, and timber lands: Provided, That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment of land for himself and, if the head of a family, for the members of his family, under the provisions of the act of February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and, if found entitled thereto, shall have the same allotted as provided in said act or any act amendatory thereof: Provided,

That lands settled upon, improved, and now occupied by settlers in good faith by qualified persons under the land laws shall be exempt from such allotment unless one or more of said Indians have resided upon said tract in good faith for four months prior to the passage of this act. And the Secretary of the Interior may reserve from settlement, entry, or purchase any tract or tracts of land upon which any village or settlement of Indians is now located, and may set apart the same for the permanent use and occupation of said village or settlement of Indians. And any person entitled to the benefits of the homestead laws of the United States who has in good faith prior to the passage of this act, made actual settlement upon any lands within said reservation not allotted under the foregoing proviso and not reserved for the permanent use and occupation of any village or settlement of Indians, with the intent to enter the same under the homestead law shall have the preferred right, at the expiration of said period of one year to enter and acquire title to the land so settled upon, not exceeding one hundred and sixty acres, upon the payment therefor of one dollar and twenty-five cents an acre, and such settler shall have three months after public notice given that such lands are subject to entry within which to file in the proper land office his application therefor; and in case of conflicting claims between settlers the land shall be awarded to the settler first in order of time: Provided, That any portion of said land more valuable for its mineral deposits than for agricultural purposes, or for its timber, shall be entered only under the law authorizing the entry and sale of timber or mineral lands: And provided further, That the heirs of any deceased settler shall succeed to the rights of such settler under

this act: Provided further, That the proceeds arising from the sale of said lands shall constitute a fund to be used under the direction of the Secretary of the Interior for the maintenance and education of the Indians now residing on said lands and their children.